

UNITED STATES COURT OF APPEALS June 8, 2010

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

TERRY L. GIBBS,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,

Defendant - Appellee.

No. 10-6108
(D.C. No. 5:05-CV-01189-M)
(W.D. Okla.)

ORDER

Before **BRISCOE**, Chief Judge, **LUCERO**, and **O'BRIEN**, Circuit Judges.

On April 21, 2010, the district court entered an order regarding Plaintiff Terry Gibbs' motion to clarify. Plaintiff, proceeding *pro se*, appeals. We dismiss the appeal. The district court order appealed is interlocutory.

"Federal appellate jurisdiction generally depends on the existence of a decision by the District Court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.' " *Federal Deposit Insurance Corp. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (quoting *Coopers & Lybrand v. Liversay*, 437 U.S. 463, 467 (1978)). In *Will v. Hallock*, 546 U.S. 345 (2006), the Supreme Court stressed that very few types of interlocutory orders can

qualify as immediately appealable collateral orders. The “conditions are ‘stringent,’ and unless they are kept so, the underlying doctrine will overpower the substantial finality interests [28 U.S.C.] § 1291 is meant to further.” *Id.* at 349.

Upon review, the court finds that the April 21, 2010 Order appealed by Plaintiff does not constitute a final or immediately appealable decision under § 1291 or under any recognized exception to the final judgment rule. Following entry of an order granting Defendant’s motion to reopen, Plaintiff’s social security case was referred to a magistrate judge for findings of fact and recommendations. Plaintiff’s case is proceeding before the district court. The magistrate judge has not issued recommendations, and the district judge has not issued a final judgment.

The appeal is **DISMISSED** for lack of appellate jurisdiction.

Entered for the Court,

Elisabeth A. Shumaker, Clerk



Kathleen T. Clifford

Attorney - Deputy Clerk
